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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/245,603	02/05/1999	DAVID T. CURIEL	D6080	5072

20350 7590 03/24/2004

TOWNSEND AND TOWNSEND AND CREW, LLP  
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EXAMINER

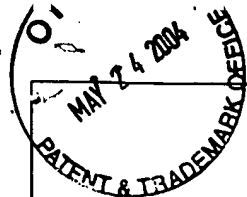
PARAS JR, PETER

ART UNIT	PAPER NUMBER
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1632

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



### Advisory Action

Application No.	Applicant(s)	
09/245,603	CURIEL ET AL.	
Examiner	Art Unit	
Peter Paras, Jr.	1632	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

#### PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-4, 9, 11, 16, and 22.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: proposed claim limitations directed to homologous recombination between a plasmide comprising the fiber gene having a Swal site and a plasmid comprising a cDNA encoding a tripeptide would require further consideration and/or a new search also new claims 24-25 were presented without canceling a corresponding number of finally rejected claims.

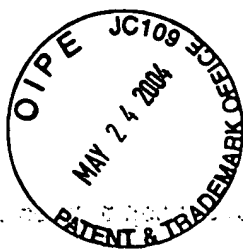
Continuation of 5. does NOT place the application in condition for allowance because: the proposed claims have not been entered. Applicant's arguments with regard to the rejections under 102 and 103 are solely directed to the proposed claim amendments and have not been considered. The proposed claim amendments would have been sufficient to overcome the rejection under 112, 2<sup>nd</sup> paragraph. Accordingly, all the standing rejections of record are maintained.

PETER PARAS, JR.  
PRIMARY EXAMINER

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May 20, 2004

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Commissioner for Patents  
PO Box 1450  
Alexandria, Virginia 22313-1450

**Re: Advisory Action for Application No. 09/245,603**

Dear Commissioner:

We received an **Advisory Action** for the above application on April 5, 2004. We have determined that it is not Townsend and Townsend and Crew's, and we are respectfully returning it to you for handling.

Please re-route the communication to the correct recipient. Thank you.

Very truly yours,

Brien Bergner  
Docketing Assistant

BMB  
Enclosure  
60220899 v1